IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

MONDAY, THE 30TH JULY 2007 / 8TH SRAVANA 1929

WP(C).No. 4513 of 2007(K)

PETITIONER:

REV.C.H.ALFRED, MANAGER,
CORPORATE MANAGEMENT OF LUTHERAN SCHOOLS,
CALCARY LUTHERAN CHURCH, PEROORKADA P.O.,
THIRUVANANTHAPURAM.

BY ADV. SRI.P.GOPALAKRISHNAN NAIR

RESPONDENTS:

1. **STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM.**
2. **JOINT SECRETARY TO GOVERNMENT, GENERAL EDUCATION DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.**
3. **DIRECTOR OF PUBLIC INSTRUCTION, THIRUVANANTHAPURAM.**
4. **REV.R.VIJAYAKUMAR, MISSION HOUSE, LUTHERAN CHURCH, KANJIRAMKULAM P.O., THIRUVANANTHAPURAM.**

BY ADV. SRI.V.GIRI
SRI.D.KISHORE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/06/2007, THE COURT ON 30/07/2007 DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE CONSTITUTION OF LUTHERAN SCHOOLS CORPORATE MANAGEMENT DTD. 16/05/1975, ORDER NO.G4-6656/72/R.DIS.

EXT.P2: COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WP(C) NO.37459/03 DTD. 21/05/2004.

EXT.P3: COPY OF THE ORDER RO (RT) NO.871/2005/G.EDN. DTD. 28/02/2005.

EXT.P4: COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WPC. NO.7848/05 DTD. 5/07/2006.

EXT.P5: COPY OF THE JUDGMENT OF THE HON'BLE SUPREME COURT IN CIVIL APPEAL NO.4123/06 (ARISING OUT OF SLP NOS.26954-26969/2005) DTD. 14/09/2006.

EXT.P6: COPY OF THE ORDER IN CMP NO.8934/06 IN O.S.A.NO.265 TO 272/03 DTD. 3/11/2006 OF THE HON'BLE HIGH COURT OF MADRAS.

EXT.P7: COPY OF THE ORDER (LETTER) REF.NO.LET/29/05/SU DTD. 27/12/2005.

EXT.P8: COPY OF THE APPLICATION FILED BY THE ADMINISTRATORS BEFORE THE 3RD RESPONDENT DTD. 27/12/2005.

EXT.P9: COPY OF THE ORDER NO.ET (5)-41227/04/DPI/K.DIS. DTD. 9/11/2006.

EXT.P10: COPY OF THE ORDER G.O.(RT) NO.476/07/G.EDN. DT.D. 2/2/2007.

EXT.P11: COPY OF THE ORDER IN OSA NO.265 TO 272/03 DTD.17/08/2005.

EXT.P12: COPY OF THE ORDER NO.ET3.35930/91 DTD. 16/10/1991.

EXT.P13: COPY OF THE ORDER NO.965/2006-07 DTD. 14/06/2006.

EXT.P14: COPY OF THE NOTICE NO.G-9217/06 DTD. 5/08/2006.

EXT.P15: COPY OF THE ORDER NO.F1/49779/06/DPI K.DIS. DTD. 7/08/2006.

EXT.P16: COPY OF THE ORDER IN CONTEMPT PETITION NO.528/06 OF THE HON'BLE HIGH COURT OF MADRAS DTD. 18/01/07.

EXT.P17: COPY OF THE ORDER IN MP NO.2/07 IN WP.8874/07 OF THE HON'BLE HIGH COURT OF MADRAS DTD. 9/03/2007.

4TH RESPONDENT'S EXHIBITS:

EXT.R4(A): COPY OF THE ORDER PASSED BY THE DIVISION BENCH OF MADRAS HIGH COURT ON 31/12/2003 IN OSA NOS. 265-272 OF 2003 DIRECTING FRESH ELECTIONS TO BE CONDUCTED IN RESPECT OF NAGERCOIL AND TRIVANDRUM SYNOD.

EXT.R4(B): COPY OF COMMUNICATION OF ADVOCATE COMMISSIONER DTD. 4/05/2004.

EXT.R4(C): COPY OF THE RELEVANT EXTRACT OF MINUTES DTD. 11/5/2004 OF TRIVANDRUM SYNOD IN RESPECT OF APPOINTMENT OF PETITIONER.

EXT.R4(D): COPY OF THE ORDER OF TRIVANDRUM SYNOD APPOINTING PETITIONER AS MANAGER IN PURSUANCE OF EXHIBIT R4(C).

EXT.R4(E): COPY OF THE REPRESENTATION DTD. 12/05/2004 TO DIRECTOR OF PUBLIC INSTRUCTIONS.

EXT.R4(G): COPY OF THE ORDER OF THE MADRAS HIGH COURT DTD. 22/07/2004 IN OSA NO.265 TO 272 OF 2003.

EXT.R4(H); COPY OF THE ORDER OF MADRAS HIGH COURT DTD. 22/12/2004 SETTING ASIDE THE ELECTIONS CONDUCTED TO CHURCH COUNCIL.

EXT.R4(I): COPY OF THE JUDGMENT OF THIS HON'BLE COURT DTD. 13/07/2006 IN WP(C) NO.16596 OF 2006.

EXT.R4(J): COPY OF THE COVERING LETTER DTD. 26/09/2006 ADDRESSED TO DIRECTOR OF PUBLIC INSTRUCTIONS.

...3/-

EXT.R4(K): COPY OF THE COMMUNICATION DTD. 6/10/2006 ALONG WITH EXTRACT OF MINUTES OF CHURCH COUNCIL HELD ON 5/10/2006 AND 6/10/2006 SENT TO DPI.

EXT.R4(L): COPY OF THE EXTRACT OF MINUTES OF CHURCH COUNCIL HELD ON 5/10/2006 AND 6/10/2006.

EXT.R4(M): COPY OF THE ORDER OF THE THIRUVANANTHAPURAM SYNOD ON 23/07/2004 WHICH IS ACCEPTED IN EXHIBIT R4 (L).

EXT.R4(N): COPY OF THE REPRESENTATION ADDRESSED TO THE DIRECTOR OF PUBLIC INSTRUCTION DTD. 30/10/2006.

EXT.R4(O): COPY OF THE COUNTER AFFIDAVIT FILED BY THE PETITIONER HEREIN AS THIRD RESPONDENT IN I.A.6644 OF 2005 IN WPC.NO. 7848 OF 2005.

EXT.R4(P): COPY OF THE ORDER PASSED BY THE 4TH RESPONDENT IN THE CAPACITY OF MANAGER OF THE SCHOOL PROMOTING SMT. IRENE CHRISTY AS HEADMISTRESS OF LM LPS VENKITAKUZHY.

EXT.R4(Q): COPY OF COMMUNICATION FROM THE SECRETARY TO GOVT. OF KERALA ADDRESSED TO THE 4TH RESPONDENT REQUIRING HIM TO PARTICIPATE FOR A HEARING HELD ON 20/10/2004.

EXT.R4(R): COPY OF NOTICE SENT FROM THE OFFICE OF DEO REQUIRING THE PETITIONER TO ATTEND PERSONAL HEARING.

EXT.R4(S): COPY OF COMMUNICATION ISSUED FROM THE OFFICE OF AEO, KATTAKADA ON 11/02/2005 GRANTING APPROVAL FOR APPOINTMENT EFFECTED BY 4TH RESPONDENT.

EXT.R4(T): COPY OF STAFF FIXATION ORDER COMMUNICATED TO THE 4TH RESPONDENT DTD. 14/07/204.

EXT.R4(U): COPY OF APPOINTMENT ORDER ISSUED TO SMT.S.SHEEJA 51 A CLAIMANT DTD. 1/06/2004.

EXT.R4(V): COPY OF THE APPOINTMENT ORDER ISSUED TO SMT. AJITHAKUMARI DTD. 1/06/2004.

EXT.R4(W): COPY OF THE COMMUNICATION DTD. 3/06/2004 OF HEADMASTER, LMLPS, VENKITAKUZHY.

EXT.R4(X): COPY OF THE COMMUNICATION ISSUED BY ASST.ENGINEER DTD. 5/08/2004.

EXT.R4(Y): COPY OF APPLICATION FOR IMPLEADMENT FILED BEFORE MADRAS HIGH COURT AS CMP 6425 – 6452 IN OSA 265-272 OF 2003.

EXT.R4(Z): COPY OF THE CONSTITUTION OF THE INDIAN EVANGELICAL LUTHERAN CHURCH.

EXT.R4(AA): COPY OF THE CONTEMPT PETITION DTD. 28/06/2006 IN CONTEMPT PETITION NO.528 OF 2006.

EXT.R4(AB): COPY OF THE ORDER OF THE MADRAS HIGH COURT IN OSA 265 TO 272 OF 2003 DTD. 3/11/2006.

EXT.R4(AC): COPY OF THE ORDER OF THE MADRAS HIGH COURT IN OSA 265 TO 272 OF 2003 DTD. 6/02/207.

5TH RESPONDENT'S EXHIBITS:

EXT.R5(A): COPY OF THE ORDER DTD. 11/05/2004 OF THE TRIVANDRUM SYNOD.

EXT.R5(B): COPY OF THE CHURCH COUNCIL MINUTES DTD. 5/10/06 AND 6/10/2006.

EXT.R5(C): COPY OF THE PROCEEDINGS DTD. 6/10/2006.

EXT.R5(D): COPY OF THE PROCEEDINGS OF THE SECRETARY, TRIVANDRUM SYNOD AND ORDER NO.TC 36/04 DTD. 23/07/2004.

EXT.R5(E): COPY OF THE EXTRACT OF CHURCH COUNCIL MEETING DTD. 5/10/2006 AND 6/10/2006.

EXT.R5(F): COPY OF THE GENERAL GUIDE LINES AND INSTRUCTIONS DTD. 17/01/2007.

EXT.R5(G): COPY OF THE ELECTION NOTIFICATION-I DTD. 25/01/2007.

EXT.R5(H): COPY OF THE ORDER DTD. 9/04/2007 IN I.A.NO.142/07 IN OS.47/07 OF SUB COURT, PADAMANABHAPURAM.

EXT.R5(I): COPY OF THE ORDER DTD. 4/06/2007 IN MP (MD) 2/07 IN C.R.P. 854/07 OF HIGH COURT OF MADRAS.

EXT.R5(J): COPY OF THE ELECTION NOTIFICATION DTD. 13/06/07.

/TRUE COPY/

P.S.TO JUDGE

KSS

A.K. Basheer, J.

- -

W.P(C) No.4513 of 2007

- -

Dated this the 30th day of July, 2007.

J U D G M E N T

The factional feud in the India Evangelical Lutheran Church which is a Christian Religious denomination, has continued relentlessly for the last several years. This is one of the scores of writ petitions filed by either of the two rival factions, leave alone the large number of other writ petitions by the teaching and non-teaching staff of the various educational institutions under the management of the Church seeking approval, payment of salary etc.

2. At the very outset it is made clear that I do not propose to go into the long history of litigations in the Church. But it is still necessary to take a brief look at some of the major events, since they may have some relevance in disposal of this writ petition.

3. The India Evangelical Lutheran Church (hereinafter referred to as the Church) is a Society registered under the Societies Registration Act 1860. It is admittedly governed by a Constitution, a copy of which is on record as Ext.R4 (3). In the hierarchy of the Church, the Church Council is the supreme authority. There are Pastorates at the local level and circles above them, which constitute the Synod. There are 3 Synods under the Church. They are (1) Nagercoil Synod (2) Trivandrum Synod and (3) Ambur Synod. The Trivandrum Synod with which we are concerned, consists of a few Circles situated both in Kerala as well as in Tamil Nadu.

4. Trivandrum Synod is the corporate educational agency for the 23 educational institutions in Kerala under the church. These institutions under the Church are governed by approved constitution and bye-laws. Ext.P1 is stated to be the true photocopy of the Constitution and Bye laws of Trivandrum Synod.

5. As mentioned earlier, disputes had been simmering in the Church because of factional feud, particularly in Trivandrum Synod. It is not in dispute that elections were held to the Trivandrum Synod in January-February 2002. The members of the Executive Committee could not arrive at a consensus as regards the election to the post of Manager. While one group elected petitioner as the Manager, the rival group in the Executive Committee elected one Rev.J.Sensor as the Manager in the meeting held on April 24, 2002. To make a long story short, this Court in Ext.P2 judgment dated May 21, 2004 held that the Government was not justified in approving the appointment of Sri. Simon Alexander as the Manager and issued a direction to the Government to pass appropriate consequential orders granting approval to the appointment of petitioner as the Manager. Accordingly by Ext.P3 order dated February 28, 2005, the Government held that petitioner had " a better claim as compared to others to be appointed as Manager of Lutheran schools" from June 8, 2002. Accordingly petitioner's appointment was approved.

6. It is not in dispute that the term of the elected Manager is for 3 years as stipulated in the Constitution and bye-laws of the school. It

is also provided in the bye-laws that the Executive Committee can remove the Manager at any time by a 2/3rd majority of its "voting members". It is not disputed by the petitioner that his tenure of appointment as Manager was for 3 years with effect from June 8, 2002.

7. In this context it is pertinent to note that several original suits were pending before the Madras High Court in respect of the dispute in the Church. Since some of the Circles under the Trivandrum Synod are situated in Tamil Nadu, the High Court of Madras has got jurisdiction over the said Synod also , apart from Nagercoil Synod and Ambur Synod. It appears that in one of the earliest suits before the Madras High Court, elections held to the Church Council, Synods of Trivandrum, Nagercoil etc. were challenged in the year 1997. Thereafter elections held in the year 2002 were also challenged by some of the members. Ultimately in the year 2003, a learned single Judge of the Madras High Court declined to set aside the elections. Appeals were filed against the above judgment of the learned single Judge.

8. While the appeals were pending before the Division Bench, the Court appointed Advocate R.Bharaneedharan as Election Officer and he was directed to conduct the election. Accordingly elections were held to the Trivandrum Synod from April 29, 2004 to May 1, 2004. Thereafter on May 11, 2004 the Executive Committee of the Synod elected Rev.R.Vijayakumar , respondent No.4 herein, as the

Manager for a period of 3 years. But later the Division Bench, after considering the report of the Advocate Commissioner found that there was no registration of the Synod as well as the Apex body under the Societies Registration act and therefore the "very conduct of the election as well as the result declared thereon shall become a nullity". Accordingly the election held to the Trivandrum Synod in April-May 2004 was declared as null and void. The Division Bench rendered the judgment on August 17, 2005.

9. The above judgment of the Madras High Court was challenged before the Supreme Court in Civil Appeal No. 4123/2006 etc. The Supreme Court took the view that the finding entered by the Madras High Court was not sustainable. It was found that the election could not have been held to be null and void on the ground that the Society had no valid registration at the time of election. A copy of the judgment dated September 14, 2006 is on record as Ext.P5.

10. It is contended by the petitioner that shortly after the Division Bench of the Madras High Court had passed the judgment setting aside the election held to the Trivandrum Synod in the year 2004, the Chief Administrator and Associate Administrator viz., Justice J.Kanakaraj and Mr. M.S.Palanisami had appointed him as Manager of the schools under the Trivandrum Synod after revoking their earlier proceedings by which Rev.Stephanos and Rev.Jeevaraj were appointed. Ext.P7 is stated to be the order of appointment of the petitioner, issued by the Administrators on December 27, 2005. By another

communication of the instant date, the Administrators had requested the Director of Public Instruction, Thiruvananthapuram to approve the appointment of the petitioner as Manager. Copy of the said communication has also been produced as Ext.P8.

11. It appears that in the meanwhile, respondent No.4 had approached this Court with a prayer to issue a direction to the Director of Public Instruction to afford him an opportunity of hearing before granting approval to the appointment of the petitioner . The said writ petition was closed by this Court recording the submission made by the learned counsel for the petitioner herein that he had not so far made any application for approval of his appointment as Manager before any authority. A copy of the said judgment dated July 3, 2006 has been produced as Ext.R4(i).

12. On November 9, 2006, the Director passed Ext.P9 order approving the appointment of the petitioner as requested by the Administrators appointed by the High Court of Madras. The Director took the view that " a vaccum of Managership" has to be avoided. Therefore the appointment of the petitioner was approved "for the second term with effect from 8/6/2005 to 7/6/2008" (emphasis supplied).

13. The above order was challenged by respondent No.4 in a revision petition before the Government. By order dated February 2, 2007 a copy of which is on record as Ext.P10, the Government held that respondent No.4 was eligible to be appointed as Manager of the

school under the Trivandrum Synod with effect from June 8, 2005, the date on which the 3 year term of the petitioner had expired. The said order is impugned by the petitioner in this writ petition contending, inter alia, that the valid and regular appointment of petitioner made by the Administrators under Rule 3 of Chapter III KER was not liable to be set aside and that too, in order to give the benefit of approval in favour of respondent No.4, who had not been appointed by the educational agency. The Church Council not being the educational agency, was not entitled to appoint a Manager and therefore such an appointment was outside the purview of the Act and the Rules. It is also contended by the learned Senior Counsel for the petitioner that the Govt. had totally misconstrued and misinterpreted the observations made by their Lordships of the Supreme Court in Ext.P5 judgment.

14. As noticed already, the election held to the Trivandrum Synod in April-May 2004 was held to be null and void by the Division Bench of the Madras High Court solely for the reason that the Society (the Church) had no valid registration at that point of time. But the Supreme Court held that the above view taken by the Madras High Court was not legal and valid. After considering the impact of non-renewal of registration of the Society, their Lordships held that "a Society need not necessarily be held to have become defunct only because certain statutory provisions have not been complied with by it". The Court also observed that if the Society became defunct or if the other statutory requirements were not complied with by the

members of the Society, penal measures could have been taken by the competent statutory authority; but election of the office bearers could not have been set aside. The following observations of their Lordships may be noticed:

> "...Right to contest an election of an office-bearer of the society is a statutory right of the member thereof. Such a right also exists under the bye-laws of the society. It is not the case of the respondents that the bye-laws of the society are invalid in law. Once a valid election was held, the High Court, in our opinion, could not have directed setting aside of an election only on the purported ground that it became defunct. .....
>
> There is, therefore no reason as to why the elected members should not be allowed to carry on the activities of the society wherefor they were duly elected. We may, however, hasten to add that when we say so, we do not intend to

> pronounce on the validity or otherwise of the elections held. If any application has been filed by a person aggrieved for setting aside an election, the same undoubtedly will have to be disposed of in accordance with law."
>
> (emphasis supplied)

15. It is also pertinent to note that the Supreme Court had noticed that the tenure of the respective elected Committees of Church Council and Ambur Synod had not expired; but that of Nagercoil and Trivandrum Synods had. It may be remembered that the Supreme Court had pronounced the judgment on September 14, 2006. As noticed already, the election to the Trivandrum Synod was held in April-May, 2004. The term of the Executive Committee is admittedly for 2 years, whereas the appointment of the Manager is for 3 years.

16. Respondent No.4 has got a specific case that he was elected as Manager by the Executive Committee for 3 years with effect from May 11, 2004 and therefore he was entitled to hold the post of Manager from that date. It is also the specific case of respondent No.4 that soon after his election, the Secretary of the Committee had requested the Director of Public Instruction to approve his appointment. A copy of the communication sent by the Secretary in this regard on May 12,

2005 is on record as Ext.R4 (e). Similarly Ext.R4(f) is stated to be the application for change of management as provided under Rule 4A of Chapter III KER. The declaration signed by the petitioner furnished by respondent No.4 as provided under Rule 8 of Chapter III is also seen annexed to Ext.R4(f). Even before the request made by the Secretary for approval of appointment of respondent No.4 could be considered, the Division Bench of the Madras High Court had passed an order directing the elected members "to regulate the registration of the Synods as well as the Apex Body in the manner known to law and report the matter to the Court within 8 weeks to enable the court to approve their election". This order was passed by the Division Bench on July 21, 2004. A copy of the said order has been produced as Ext.R4 (g). A perusal of Ext.4(h) order passed by the Division Bench of the Madras High Court further shows that the joint memo submitted on behalf of the elected office bearers and candidates who had contested the election was accepted by the court and interim arrangements were made in terms thereof pending regularisation of registration of the Society and the bodies thereunder.

17. Shortly after the above orders (Exts.R4(g) and R4(h)) were passed by the Division Bench and while the request made by the Secretary of the Executive Committee of Trivandrum Synod to approve the appointment of respondent No.4 as the Manager was pending before the Director, the Government issued an order on February 28, 2005 approving the appointment of the petitioner to which order I have

referred to earlier (Ext.P3). The said order was challenged before this Court by respondent No.4 and one Mr.Yowell, the Secretary of the Synod in WP.7848/2005. That writ petition was disposed of along with connected writ petitions through Ext.P4 judgment, in which this Court found that respondent No.4 and the Secretary had failed to establish their right to claim approval "as admittedly the election to the body which appointed them itself stands set aside". It is brought to my notice that the appeal preferred against the above judgment is pending in WA.2311/2006 before the Division Bench of this Court.

18. It is submitted by Sri.V.Giri, learned counsel for respondent No.4 that the entire scenario in the matter has changed after the Supreme Court rendered Ext.P5 judgment. It is submitted by the learned counsel that the challenge made by the petitioner against Ext.P10 order in the changed context is wholly untenable. The Government had rightly found that the petitioner had no authority to continue as Manager on expiry of the tenure of his appointment. It is also pointed out by the learned counsel that their Lordships of the Supreme Court had found that there was no reason as to why "the elected members should not be allowed to carry on the activities of the society wherefor they were duly elected." It is true that no orders on the request for approval of appointment of respondent No.4 as Manager could be passed by the Department because of the series of intervening developments in the appeal pending before the Division Bench of the Madras High Court. But once the Supreme Court did give a quietus to

the issue relating to the validity of the election held to the Synod in 2004, there was no other legal impediment in approving the appointment of respondent No.4, it is contended by the learned counsel.

19. However Sri.T.P.Kelu Nambiar, learned senior counsel contends that the Government could not have ordered approval of appointment of respondent No.4 on the basis of the request made by the Church Council. Sri.Nambiar submits that such a request at the behest of the Church Council could not have been entertained at all, since it was not the educational agency. It is pointed out by the learned senior counsel that the educational agency is the India Evangelical Lutheran Church, Trivandrum District Synod, as could be seen from Ext.P1 Constitution and bye-laws which has been approved by the Department. Undoubtedly there is some force in the above contention. Though it is vaguely contended by respondent No.4 in his counter affidavit that Church Council is the educational agency for all the institutions which come under the management of the Lutheran Church, it can be seen from Ext.R4(f) application submitted by the Secretary, that "Trivandrum Synod Executive Committee" is shown as the educational agency. In Clause (iii) Part I of Ext.P1 Constitution, the educational agency is described thus: "The India Evangelical Lutheran Church as proprietary body shall be the Educational Agency. In Kerala this agency is represented by its member Synod, the Trivandrum District Synod". Therefore as far as the 23 schools coming under the Trivandrum Synod are concerned, the educational agency is

the "Trivandrum District Synod of the corporate management of schools of India Evangelical Lutheran Church."

20. Learned senior counsel invites my attention to Ext.R4(k) and contends that the President of the Church Council had issued the request to the Director of Public Instruction to issue formal approval for appointment of respondent No.4 as Manager. A perusal of the above communication shows that the President had informed the Director that the Church Council, which is the Apex Body of India Evangelical Lutheran Church, had in its meeting held on 6th of October 2006, unanimously resolved that respondent No.4 who was appointed the Manager by Trivandrum Synod on May 11, 2004 would be allowed to continue as Manager till the next elected Executive Committee of Trivandrum Synod appoints a new Manager. I do not find any incongruity or impropriety in the said request made by the Church Council.

21. It has to be remembered that the Secretary of Trivandrum Synod had forwarded Ext.R4(e) order of appointment of respondent No.4 to the Department on May 12, 2004 along with Ext.R4(f) application for change of management immediately after the election. As noticed already, no decision had been taken in the matter because of the chain of events that took place in the Madras High Court. If the Church Council thought it fit to forward the resolution passed by it, granting permission to respondent No.4 to continue as Manager, on the strength of his election in May 2004, especially after the judgment of

the Supreme Court, it cannot be said that there was any irregularity in the said action. It has to be noticed that the Government has not relied on the said request made by the Church Council while taking the view that respondent No.4 was entitled to hold the post of Manager with effect from June 8, 2005, the date of expiry of the term of the petitioner. A perusal of Ext.P10 order shows that the entire gamut of the issue had been considered by the Government before taking the above decision.

22. There is yet another aspect of the matter. The Administrators appointed by the Madras High Court had issued Ext.P7order appointing the petitioner as Manager, on December 27, 2005. It is seen from Ext.P7 that the Administrators had by their proceedings dated October 28, 2005 appointed Rev.Stefanos and Rev.Jeevaraj as Joint Managers. But the Administrators had cancelled the said proceedings on the same day as is seen indicated in Ext.P7 itself for reasons unknown. Anyhow, the fact remains that there was a fresh appointment in favour of the petitioner with effect from October 28, 2005. In Ext.P8 communication sent by the Administrators, on the same day (December 27, 2005) they had requested the Director to approve the appointment of the petitioner as Manager of all the schools under the Church in the State of Kerala. The Administrators did not request the Director to approve the appointment of the petitioner for any specified period, leave alone for a second term of 3 years. But in Ext.P9 order the Director gave approval for a “second term” with effect from 8/6/2005

to 7/6/2008. There is no clue as to how the Director could arrogate to himself the power or authority to give a second term to the petitioner. Such a right is vested only in the Executive Committee as is clear from Ext.P1.

23. In this context it may also be noticed that the admitted case of the petitioner is that he was appointed for a term of 3 years starting from June 8, 2002. His tenure would have terminated in June 2005. Therefore in the absence of any regular or valid appointment in favour of the petitioner beyond the period of the term of his initial appointment, it cannot be said that he was entitled to continue in office after completing his term. Further, it has not been brought to my notice under what authority the Administrators had reappointed the petitioner. There is nothing on record to show that they had obtained permission or concurrence from the Madras High Court before issuing Ext.P7.

24. It is also significant to note that petitioner does not have a case that elections were not held to the Executive Committee in 2004 on expiry of its 2 year term. It is also not in dispute that respondent No.4 was elected by the Executive Committee as Manager with effect from May 11, 2004. But the election was set aside by the Madras High Court as indicated earlier and consequently the appointment of respondent No.4 could not be approved at that time because of the intervening developments. The fact remains that petitioner had completed his legitimate tenure of three years on June 7, 2005. The

case of respondents 4 and 5 is that the petitioner was removed from the post of Manager by the newly elected Executive Committee. More importantly, the Synod had suspended him from service and later the Church Council had approved the said decision as could be seen from Exts.R5(b) and R5(e). Anyhow I do not deem it necessary to go into those areas of controversy in view of the findings entered by me earlier.

25. I have carefully perused Ext.P10 order and the other relevant materials on record. Ext.P10 order, in my view, cannot be faulted not only for the reason that the Government had passed the said order after adverting to all the relevant aspects of the issue in its correct perspective, but also since petitioner could not have staked a claim to continue in office after the expiry of his term, in view of the judgment of the Supreme Court.

26. Having regard to the entire facts and circumstances of the case I do not find any reason to interfere with Ext.P10 order.

Writ Petition fails and it is accordingly dismissed.

A.K. Basheer
Judge.

an.